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| APPLICATION NO.  | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO.           | CONFIRMATION NO. |
|--|-------------|----------------------|-------------------------------|------------------|
| 10/616,926   | 07/11/2003  | Kimberly A. Anderson | 239570US 25 CONT              | 3009             |
| 22850 7590 03/15/2007<br>OBLON, SPIVAK, MCCLELLAND, MAIER & NEUSTADT, P.C.<br>1940 DUKE STREET<br>ALEXANDRIA, VA 22314 |             |                      | EXAMINER<br>GILBERT, SAMUEL G |                  |
|  |             |                      | ART UNIT                      | PAPER NUMBER     |
|  |             |                      | 3735                          |                  |

| SHORTENED STATUTORY PERIOD OF RESPONSE | NOTIFICATION DATE | DELIVERY MODE |
|--|-------------------|---------------|
| 3 MONTHS                               | 03/15/2007        | ELECTRONIC    |

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Notice of this Office communication was sent electronically on the above-indicated "Notification Date" and has a shortened statutory period for reply of 3 MONTHS from 03/15/2007.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

patentdocket@oblon.com  
oblonpat@oblon.com  
jgardner@oblon.com

|                              |                                      |  |  |
|------------------------------|--------------------------------------|--|--|
| <b>Office Action Summary</b> | <b>Application No.</b><br>10/616,926 | <b>Applicant(s)</b><br>ANDERSON ET AL. |  |
|                              | <b>Examiner</b><br>Samuel G. Gilbert | <b>Art Unit</b><br>3735                |  |

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 07 December 2006.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 9-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 9, 10 and 13-17 is/are rejected.
- 7) ☒ Claim(s) 11 and 12 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claim 9 and 15 are rejected under 35 U.S.C. 102(e) as being anticipated by Rizvi (6,168,611).

Claim 9 - the applicant's attention is invited to the embodiment of figures 5-8A, element -50'- is an arcuate needle, element -62- is a first handle, and element 68 is a second handle, opening -60'- the examiner is taking as means for associating the needle with a sling. The examiner is taking the sutures to form a sling. The needle has a first and second end.

Claim 15 - a needle as claimed is provided, the end of the needle opposite the first handle is inserted and the needle is passed through the tissue by grasping the first or second handle to control the passage of the needle.

### ***Claim Rejections - 35 USC § 103***

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The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 10, 13, 14 16 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rizvi (6,168,611) in view of Aiyama et al (5,669,101).

Rizvi teaches a needle and method as claimed but does not teach the second handle being movable along the shaft of the needle. The use of movable handles is old and well known in the mechanical tool arts. Aiyama et al teaches a movable handle adjustable longitudinally and rotationally around the shaft of a working tool. The handle 5 is adjusted to maximize the control of the tool being used. It would have been obvious to one of ordinary skill in the tool making arts at the time the invention was made to use the concept of an adjustable handle as taught by Aiyama et al with the second handle of Rizvi to provide the user of the needle the ability to adjust the second handle to maximize the control of the needle as is taught by Aiyama et al.

Claim 13 - the square edges of element -62- form gripping means as claimed.

Claim 14 - the needle 50' extends within handle -62-

Claim 16 and 17 - in using a device as described above, a needle having a first handle and a second moving handle in is the examiner's position that it would have been obvious to one of ordinary skill in the medical arts to at the beginning of the procedure to place the movable handle towards the distal end of the needle, placing the handle near the point of the needle. One would inherently want to control the point of

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the needle at the beginning of the procedure to insure proper positioning of the point of the needle during insertion of the point of the needle. The needle may then be inserted to the depth at which the handle would interfere with any further insertion at which time it would be necessary to move the second handle away from the patient and towards the first handle. This process could be repeated as many times as necessary.

### ***Allowable Subject Matter***

Claims 11 and 12 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

### ***Response to Arguments***

Applicant's arguments filed 12/7/2006 have been fully considered but they are not persuasive.

Regarding claims 9, 15 and Rizvi the applicant argues that the needle of Rizvi is not "arcuate". The applicant has set forth a definition of arcuate as "formed in the shape of an arc". The applicant's original specification does not set forth a "special definition" for the term arcuate and only sets forth examples of the shapes that may be used. It is the examiner's position that "arcuate" has a broader definition than now argued by the applicant. As found at [www.dictionary.com](http://www.dictionary.com), see Dictionary.com Unabridged, arcuate is defined as "bent or curved like a bow". It is the examiner's position that the needle of

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Rizvi is bent like a bow. The examiner has provided Malan(5,996,566) that shows a bow having the shape as set forth by the needle of Rizvi. The applicant's attention is invited to figure 2 and the elements -30-, -12- and -18- showing the shape of the bent needle of Rizvi. Further, the applicant argues that Rizvi only sets forth one handle and that element -62- is not a handle. The applicant has not set forth any special definition for the term handle. The examiner believes the term handle is a broad term. As found at [www.dictionary.com](http://www.dictionary.com), see Kernerman English Multilingual Dictionary, handle is defined as " the part of an object by which it may be held or grasped". The examiner believes that the needle of Rizvi may be held and grasped by element -62-. The examiner would like to point out that the method sets forth alternative language that requires only one handle.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

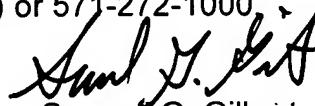
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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Samuel G. Gilbert whose telephone number is 571-272-4725. The examiner can normally be reached on Monday-Friday 6:30-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles Marmor II can be reached on 571-272-4730. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
Samuel G. Gilbert  
Primary Examiner  
Art Unit 3735

sgg